IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

THURSDAY, THE 22ND FEBRUARY 2007 / 3RD PHALGUNA 1928

WP(C).No. 34634 of 2006(W)

PETITIONER:

K. PARAMESWARAN NAIR,
THAYYILKIZHAKKATHIL, NADUVATTOM P.O.,
PALLIPPAD, HARIPPAD.

BY ADV. SRI.G.PRABHAKARAN

RESPONDENTS:
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1. **THE REGIONAL TRANSPORT AUTHORITY,**
   ALAPPUZHA, REPRESENTED BY ITS SECRETARY.

2. **THE SECRETARY,**
   REGIONAL TRANSPORT AUTHORITY, ALAPPUZHA.

3. **THE STATE TRANSPORT APPELLATE TRIBUNAL,**
   ERNAKULAM.

BY GOVERNMENT PLEADER SMT. M.K.PUSHAPALATHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:	**COPY OF THE PROCEEDINGS DTD. 30/08/2006.**
EXT.P2:	**COPY OF THE APPEAL MEMORANDUM DTD. 11/10/2006 AS M.V.A.A.NO.614/06.**
EXT.P3:	**COPY OF THE JUDGMENT DTD. 16/12/2006 IN M.V.A.A.NO.614/2006.**
EXT.P4;	**COPY OF THE ORDER DTD. 2/02/2005 IN WP(C) NO.3660/2005.**
EXT.P5:	**COPY OF THE RECEIPT DTD. 2/03/2005.**
EXT.P6:	**COPY OF THE RECEIPT DTD. 23/04/2005.**
EXT.P7:	**COPY OF THE RECEIPT DTD. 14/02/2005.**
EXT.P8:	**COPY OF THE LAST PERMIT DTD. 22/08/2006.**
EXT.P9:	**COPY OF THE TEMPORARY PERMIT APPLICATION DTD. 11/12/2006.**
EXT.P10:	**COPY OF THE CHALLAN DTD. 11/12/2006.**
EXT.P11:	**COPY OF TEMPORARY PERMIT APPLICATION FOR 4 MONTHS DTD. 27/01/2007.**
EXT.P12:	**COPY OF THE CHALLAN DTD. 27/01/2007.**
EXT.P13:	**COPY OF THE TEMPORARY PERMIT APPLICATION FOR 20 DAYS DTD. 27/01/2007.**
EXT.P14:	**COPY OF THE CHALLAN DTD. 27/01/2007.**
EXT.P15:	**COPY OF THE TEMPORARY PERMIT APPLICATION DTD.17/2/2007.**
EXT.P16:	**COPY OF THE CHALLAN DTD. 17/02/2007.**
EXT.P17:	**COPY OF THE COVERING LETTER DTD. 17/02/2007.**

/TRUE COPY/

Kss

K.BALAKRISHNAN NAIR, J.

W.P.(C) NO. 34634 OF 2006-W

JUDGMENT

The petitioner was having a regular permit on the route Veeyapuram – Chengannur, granted in respect of his vehicle KL-13/A 3105. He applied for renewal of that permit. The R.T.A rejected the said application, on the ground that there is default from his part to pay the motor vehicles tax due in relation to that vehicle, by Ext.P1 decision dated 30.08.2006. The said decision reads as follows:

"Renewal rejected u/s. 81(4) since defaulter of tax"

The petitioner filed Ext.P2 appeal before the S.T.A.T., against the said decision. The said appeal was dismissed by Ext.P3 judgment. In Ext.P3 it was found that the rejection of the application under Section 81(4) of the Motor Vehicles Act was untenable, but sustained the rejection of the renewal application, relying on Section 15 of the Motor Vehicles Taxation Act. This Writ Petition is filed, challenging Exts.P1 and P3.

2. The 2nd respondent has filed a counter affidavit, supporting the decision of the S.T.A.T.

3. Heard the learned counsel on both sides. The grounds for rejection

of an application for renewal have been enumerated in Section 81(4) of the Motor Vehicles Act, which is extracted below for convenient reference:

> "81. Duration and renewal of permits: (1) .....
>
> (4) The Regional Transport Authority or the State Transport Authority, as the case may be, may reject an application for the renewal of a permit on one or more of the following grounds, namely:-
>
> (a) the financial condition of the applicant as evidenced by insolvency,or decrees for payment of debts remaining unsatisfied for a period of thirty days, prior to the date of consideration of the application;
>
> (b) the applicant had been punished twice or more for any of the following offences within twelve months reckoned from fifteen days prior to the date of consideration of the application committed as a result of the operation of a stage carriage service by the applicant, namely:-
>
> (i) plying any vehicle--
>
> (1) without payment of tax due on such vehicle;
> (2) without payment of tax during the grace period allowed for payment of such tax and then stop the plying of such vehicle;
> (3) on any unauthorised route;
>
> (ii) making unauthorised trips;
>
> Provided that in computing the number of punishments for the purpose of clause (b), any punishment stayed by the order of an appellate authority shall not be taken into account:
>
> Provided further that no application under this sub-section shall be rejected unless an opportunity of being heard is given to the applicant."

The R.T.A rejected the application for renewal of the permit under the above provision. The S.T.A.T rightly held that the said provision does not apply in the case of renewal. But, it suo motu found out a new ground with reference to Section 15 of the Motor Vehicles Taxation Act and sustained the rejection of the application for renewal of the permit. The petitioner submits, the said ground relied on by the S.T.A.T is unsustainable in law. The said point is covered in favour of the petitioner by the decision of this Court in W.P.(C) No.11503/2005 dated 29.6.2005. The relevant portion of the said judgment reads as follows:

> "4. The learned counsel for the petitioner submits that both the grounds relied on by the S.T.A.T to sustain the rejection of the application for renewal of the permit are unsustainable. Clearance of arrears of tax is not a condition precedent for granting a permit or renewing it. It is also submitted that since the permit was not renewed, there was no question of replacement of the vehicle. As and when the permit is renewed, the vehicle will be made available, as provided under Rule 172(3) of the M.V. Rules. The learned Government Pleader and also the learned counsel appearing for the 3rd respondent, on the other hand, submitted that once the tax has fallen in arrears, the permit automatically lapses and therefore, there was no permit to be renewed. It is also submitted that the petitioner should have produced the new vehicle at least at the time of consideration of the application for renewal.
>
> 5. For non-payment of tax, the permit granted in respect of a vehicle will remain in suspended animation and the same will revive as and when the tax is paid. In this case, the permit expired on 28.2.2001. For a few months preceding

> the said date, the permit remained in abeyance by virtue of the operation of Section 15 of the Kerala Motor Vehicles Taxation Act. As and when tax is paid, the permit will normally revive and come into operation. Further, I find that going by the provisions of the Act, there is no bar in granting a permit or renewing a permit, in relation to a vehicle having tax arrears. Only at the time of issuance of the permit the tax arrears should be cleared."

In view of the above decision of this Court, the Writ Petition is liable to be allowed. Accordingly, Exts.P1 and P3 are quashed. The R.T.A is directed to pass fresh orders on the application of the petitioner for renewal of the permit in accordance with law, as expeditiously as possible, at any rate, within two months from the date of production of a copy of this judgment.

4. If Ext.P15 application for temporary permit is received and pending, the 2nd respondent Secretary, R.T.A shall consider and pass orders on it in accordance with law within two weeks from the date of production of a copy of this judgment.

22nd February, 2007. K.BALAKRISHNAN NAIR, JUDGE.

Nm/